

**REPORT OF THE AUDIT OF THE
JEFFERSON COUNTY
CLERK**

**For The Year Ended
December 31, 2011**



**ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS
www.auditor.ky.gov**

**209 ST. CLAIR STREET
FRANKFORT, KY 40601-1817
TELEPHONE 502.564.5841
FACSIMILE 502.564.2912**

EXECUTIVE SUMMARY

AUDIT EXAMINATION OF THE JEFFERSON COUNTY CLERK

**For The Year Ended
December 31, 2011**

The Auditor of Public Accounts has completed the Jefferson County Clerk's audit for the year ended December 31, 2011. Based upon the audit work performed, the financial statements present fairly in all material respects, the revenues and expenditures of the County Clerk and the revenues, expenditures, and fund balances of the County Clerk's operating fund and county fund with the State Treasurer in conformity with the regulatory basis of accounting.

Financial Condition:

A fee official in counties with a population over 70,000 has two funds established with the state for the deposit of fees collected. Seventy-five percent (75%) of the fees collected are deposited in a County Clerk's operating fund and used for office expenses of the fee official. The remaining twenty-five percent (25%) of fees collected are deposited to the county government fund and paid quarterly to the county government. These funds are closed at the end of each four-year term by paying the balances to the respective county government.

The Jefferson County Clerk had total receipts of \$163,088,415, which was a \$1,466,095 decrease from the prior year. Except for reimbursed expenses in the amount of \$4,080,731 and fiscal court contributions of \$2,719,085, the clerk paid 25% of receipts to the Jefferson County Fiscal Court in the amount of \$3,750,347. This was a decrease of \$136,353 from the prior year. In addition, 75% fund operating expenditures decreased by \$2,894,599.

Lease Agreements:

Capital lease principal agreements totaled \$164,387 as of December 31, 2011.

Report Comments:

- 2011-01 The County Clerk Runs A Non-Profit Corporation Out Of Her Public Office
- 2011-02 The County Clerk Administered An Employee Charitable Fund Out Of Her Office
- 2011-03 The County Clerk Should Expend Funds For Allowable Purposes Only
- 2011-04 The County Clerk Paid Employees \$99,200 In Christmas Gifts In Calendar Year 2011

Deposits:

The County Clerk's deposits were insured and collateralized by bank securities.

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ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS

The Honorable Greg Fischer, Mayor, Louisville/Jefferson County Metro Government
Honorable Barbara A. Holsclaw, Jefferson County Clerk
Members of the Louisville/Jefferson County Metro Government

Independent Auditor's Report

We have audited the accompanying statement of revenues and expenditures - regulatory basis of the County Clerk of Jefferson County, Kentucky, and the statement of revenues, expenditures, and fund balances of the County Clerk's operating fund and county fund with the State Treasurer - regulatory basis for the year ended December 31, 2011. These financial statements are the responsibility of the County Clerk. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States, and the Audit Guide for County Fee Officials issued by the Auditor of Public Accounts, Commonwealth of Kentucky. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 1, the County Clerk prepares the financial statements on a regulatory basis of accounting that demonstrates compliance with the laws of Kentucky, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

In our opinion the accompanying financial statements referred to above presents fairly, in all material respects, the revenues, expenditures, and fund balances of the County Clerk's operating fund and county fund with the State Treasurer for the year ended December 31, 2011, in conformity with the regulatory basis of accounting described in Note 1.

In accordance with Government Auditing Standards, we have also issued our report dated August 27, 2012 on our consideration of the County Clerk's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be considered in assessing the results of our audit.



The Honorable Greg Fischer, Mayor, Louisville/Jefferson County Metro Government
Honorable Barbara A. Holsclaw, Jefferson County Clerk
Members of the Louisville/Jefferson County Metro Council

Based on the results of our audit, we have presented the accompanying comments and recommendations, included herein, which discusses the following report comments:

- 2011-01 The County Clerk Runs A Non-Profit Corporation Out Of Her Public Office
- 2011-02 The County Clerk Administered An Employee Charitable Fund Out Of Her Office
- 2011-03 The County Clerk Should Expend Funds For Allowable Purposes Only
- 2011-04 The County Clerk Paid Employees \$99,200 In Christmas Gifts In Calendar Year 2011

This report is intended solely for the information and use of the County Clerk and members of the Louisville/Jefferson County Metro Council, Kentucky, and the Commonwealth of Kentucky and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adam H. Edelen', with a long horizontal flourish extending to the right.

Adam H. Edelen
Auditor of Public Accounts

August 27, 2012

JEFFERSON COUNTY
BARBARA A. HOLSCLOW, COUNTY CLERK
STATEMENT OF REVENUES AND EXPENDITURES - REGULATORY BASIS

For The Year Ended December 31, 2011

Revenues

State Fees For Services		\$	264,356
Metro Government			2,719,085
Licenses and Taxes:			
Motor Vehicle-			
Licenses and Transfers	\$	17,798,388	
Usage Tax		60,966,890	
Tangible Personal Property Tax		55,263,717	
Licenses-			
Marriage Licenses		151,875	
Affordable Housing Trust		880,044	
Shelter for Spouse Abuse		49,840	
Deed Transfer Tax		2,476,088	
Delinquent Taxes		17,551,056	
Delinquent Taxes (Reimbursed)		15,791	155,153,689
Fees Collected for Services:			
Recordings-			
Deeds, Easements, and Contracts		206,709	
Real Estate Mortgages		338,625	
Chattel Mortgages and Financing Statements		1,128,161	
Powers of Attorney		35,076	
Bail Bonds		2,242	
Fee for Library and Archives		114,471	
Tax Liens		190,533	
Extra Pages		991,471	
Assignments		29,952	
Releases		320,387	
Probate		22,540	
Lien Holder Penalties		13,144	
Corporation and Business		34,100	
All Other Recordings		33,445	3,460,856

The accompanying notes are an integral part of the financial statements.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 STATEMENT OF REVENUES AND EXPENDITURES - REGULATORY BASIS
 For The Year Ended December 31, 2011
 (Continued)

Revenues (Continued)

Other:

Candidate Filing Fees	\$	1,240	
Interest Income		18,877	
Legal Records - Clerk Expense (Reimbursed)		312,932	
Notary		420,050	
Phone/Fax		5,380	
Postage		212,398	
Tracing		23,357	
Photosat		12,720	
Election Center Miscellaneous		4,783	
Motor Vehicle - Miscellaneous		372,762	
Returned Check Payments		29,493	
Returned Check Fees		21,151	
Library		7	
Miscellaneous - Vehicle/Dealer Book		352	
Miscellaneous - (Reimbursed)		38,877	\$ 1,474,379

Prior Year Surplus		16,050
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Total Revenues		163,088,415
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Expenditures

Payments to State:

Motor Vehicle-			
Licenses and Transfers	\$	11,532,670	
Usage Tax		59,101,997	
Tangible Personal Property Tax		20,598,210	
Licenses, Taxes, and Fees-			
Delinquent Tax		1,653,858	
Legal Process Tax		492,921	
Affordable Housing Trust Fund		880,044	94,259,700

Payments to Metro Government:

Tangible Personal Property Tax	6,437,866	
Delinquent Tax	2,950,719	
Deed Transfer Tax	2,352,284	11,740,869

The accompanying notes are an integral part of the financial statements.

JEFFERSON COUNTY
 BARBARA A. HOLSCLOW, COUNTY CLERK
 STATEMENT OF REVENUES AND EXPENDITURES - REGULATORY BASIS
 For The Year Ended December 31, 2011
 (Continued)

Expenditures (Continued)

Payments to Other Districts:

Tangible Personal Property Tax	\$ 26,017,091	
Delinquent Tax	<u>7,792,457</u>	\$ 33,809,548

Payments to Sheriff		1,361,906
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Payments to County Attorney		2,374,996
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Operating Expenditures:

Other Charges-		
Bankcard Processing		<u>443,229</u>

Total Expenditures		<u>\$ 143,990,248</u>
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Net Revenues		19,098,167
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Payments to State Treasurer:

75% Operating Fund *	15,331,770	
25% County Fund	<u>3,750,347</u>	<u>19,082,117</u>

Balance Due at Completion of Audit **		<u><u>\$ 16,050</u></u>
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* Includes reimbursed expenses in the amount of \$4,080,731 for the audit period.
 See Note 1 of Notes to Financial Statements.

** Amount left in local bank account from prior year at completion of audit is \$16,050. Clerk should pay to the Kentucky Finance and Administration Cabinet.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 STATEMENT OF REVENUES, EXPENDITURES, AND
 FUND BALANCES OF THE COUNTY CLERK'S OPERATING FUND
AND COUNTY FUND WITH THE STATE TREASURER - REGULATORY BASIS

For The Year Ended December 31, 2011

	75% Operating Fund	25% County Fund	Totals
Fund Balance - January 1, 2011	\$ 0	\$ 0	\$ 0
<u>Revenues</u>			
Fees Paid to State - Operating Funds (75%)	15,331,770		15,331,770
Fees Paid to State - County Funds (25%)		3,750,347	3,750,347
Total Funds Available	15,331,770	3,750,347	19,082,117
<u>Expenditures</u>			
Louisville/Jefferson County Metro Government		3,750,347	3,750,347
County Clerk's Statutory Maximum	110,347		110,347
County Clerk's Incentive Pay	3,679		3,679
County Clerk's Expense Allowance	3,600		3,600
Personnel Services-			
Deputies' Salaries	8,288,743		8,288,743
Part-Time Salaries	69,854		69,854
Overtime Gross	31,137		31,137
Employee Benefits-			
Employer's Share Social Security	604,464		604,464
Employer's Share Retirement	1,506,583		1,506,583
Employer's Paid Health Insurance	1,267,188		1,267,188
Workers Compensation Insurance	40,152		40,152
Unemployment Insurance	34,724		34,724
Occupancy-			
Rent	77,760		77,760
Telephone	71,073		71,073
Gas/Electric	16,686		16,686
Mileage and Gasoline - Delivery	26,820		26,820
Maintenance and Repairs	277,817		277,817

The accompanying notes are an integral part of the financial statements.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 STATEMENT OF REVENUES, EXPENDITURES, AND
 FUND BALANCES OF THE COUNTY CLERK'S OPERATING FUND
 AND COUNTY FUND WITH THE STATE TREASURER - REGULATORY BASIS
 For The Year Ended December 31, 2011
 (Continued)

	75% Operating Fund	25% County Fund	Totals
<u>Expenditures</u> (Continued)			
Services-			
Personal Services	157,756		157,756
Security Services	79,720		79,720
Janitorial Services	78,445		78,445
Page Service	868		868
Printing	276,541		276,541
Advertising	81,135		81,135
Election Worker Payments	616,563		616,563
Supplies-			
Postage and Delivery	139,111		139,111
Office Expense	159,737		159,737
Minor Equipment-			
Rental Equipment	51,019		51,019
Automotive Rental	8,628		8,628
Travel and Entertainment-			
Meetings	2,628		2,628
Seminars	598		598
Tuition	3,600		3,600
Other Operating-			
Insurance and Bonds	36,465		36,465
Returned Check Expensed	52,466		52,466
Notary Bonds	1,813		1,813
Membership Dues	19,235		19,235
Subscriptions	13,078		13,078
Capital Outlay-			
Office Equipment	22,848		22,848
Computer Equipment	44,883		44,883
Computer Software	5,979		5,979
Remodeling and Renovations	3,696		3,696
Total Expenditures	14,287,439	3,750,347	18,037,786
Less: Disallowed Expenditures	(3,845)		(3,845)
Total Allowable Expenditures	14,283,594	3,750,347	18,033,941
Fund Balance - December 31, 2011	\$ 1,048,176	\$ 0	\$ 1,048,176

The accompanying notes are an integral part of the financial statements.

JEFFERSON COUNTY
NOTES TO THE FINANCIAL STATEMENTS

December 31, 2011

Note 1. Summary of Significant Accounting Policies

A. Fund Accounting

A fee official uses a fund to report on the results of operations. A fund is a separate accounting entity with a self-balancing set of accounts. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain government functions or activities.

A fee official uses a fund for fees to account for activities for which the government desires periodic determination of the excess of revenues over expenditures to facilitate management control, accountability, and compliance with laws.

B. Basis of Accounting

KRS 64.820 directs the fiscal court to collect any amount due from the County Clerk as determined by the audit.

KRS 64.350 establishes that a fee official in counties with a population over 70,000 has two funds with the State Treasurer for the deposit of fees collected. Seventy-five percent (75%) of the fees collected is deposited in a County Clerk's operating fund and used for office expenses of the fee official. The remaining twenty-five percent (25%) of fees collected is deposited to the county fiscal court fund and paid to the fiscal courts, urban-county governments, or consolidated local governments of the respective counties quarterly no later than April 15, July 15, October 15, and January 15. These funds are closed at the end of each official term by paying the balances to the respective county government.

The financial statements have been prepared on a regulatory basis of accounting, which demonstrates compliance with the laws of Kentucky and is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. Under this regulatory basis of accounting, revenues and expenditures are generally recognized when cash is received or disbursed with the exception of accrual of the following items (not all-inclusive), at December 31:

- Interest receivable
- Collection on accounts due from others for 2011 services
- Reimbursements for 2011 activities
- Payments due other governmental entities for December tax and fee collections
- Payroll expenditures incurred but not paid
- Payments due vendors for goods or services provided in 2011

The Attorney General issued a letter which stated that some revenues of the fee official offices could be considered reimbursed expenses. All reimbursed expenses are treated as revenue in the 75 percent fund.

JEFFERSON COUNTY
 NOTES TO THE FINANCIAL STATEMENTS
 December 31, 2011
 (Continued)

Note 1. Summary of Significant Accounting Policies (Continued)

C. Cash and Investments

At the direction of the fiscal court, KRS 66.480 authorizes the County Clerk's office to invest in the following, including but not limited to, obligations of the United States and of its agencies and instrumentalities, obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States, obligations of any corporation of the United States government, bonds or certificates of indebtedness of this state, and certificates of deposit issued by or other interest-bearing accounts of any bank or savings and loan institution which are insured by the Federal Deposit Insurance Corporation (FDIC) or which are collateralized, to the extent uninsured, by any obligation permitted by KRS 41.240(4).

Note 2. Employee Retirement System

The county official and employees have elected to participate in the County Employees Retirement System (CERS), pursuant to KRS 78.530 administered by the Board of Trustees of the Kentucky Retirement Systems. This is a cost sharing, multiple employer defined benefit pension plan, which covers all eligible full-time employees and provides for retirement, disability and death benefits to plan members. Benefit contributions and provisions are established by statute.

Nonhazardous covered employees are required to contribute 5 percent of their salary to the plan. Nonhazardous covered employees who begin participation on or after September 1, 2008 are required to contribute 6 percent of their salary to the plan. The county's contribution rate for nonhazardous employees was 16.93 percent for the first six months and 18.96 percent for the last six months.

Benefits fully vest on reaching five years of service for nonhazardous employees. Aspects of benefits for nonhazardous employees include retirement after 27 years of service or age 65. Nonhazardous employees who begin participation on or after September 1, 2008 must meet the rule of 87 (members age plus years of service credit must equal 87, and the member must be a minimum of 57 years of age) or the member is age 65, with a minimum of 60 months service credit.

CERS also provides post retirement health care coverage as follows:

For members participating prior to July 1, 2003, years of service and respective percentages of the maximum contribution are as follows:

Years of Service	% paid by Insurance Fund	% Paid by Member through Payroll Deduction
20 or more	100%	0%
15-19	75%	25%
10-14	50%	50%
4-9	25%	75%
Less than 4	0%	100%

JEFFERSON COUNTY
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2011
(Continued)

Note 2. Employee Retirement System (Continued)

As a result of House Bill 290 (2004 General Assembly), medical insurance benefits are calculated differently for members who began participation on or after July 1, 2003. Once members reach a minimum vesting period of ten years, non-hazardous employees whose participation began on or after July 1, 2003, earn ten dollars per month for insurance benefits at retirement for every year of earned service without regard to a maximum dollar amount.

Historical trend information showing the CERS' progress in accumulating sufficient assets to pay benefits when due is presented in the Kentucky Retirement Systems' annual financial report. This report may be obtained by writing the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, KY 40601-6124, or by telephone at (502) 564-4646.

Note 3. Deposits

The County Clerk maintained deposits of public funds with depository institutions insured by the Federal Deposit Insurance Corporation (FDIC) as required by KRS 66.480(1)(d). According to KRS 41.240(4), the depository institution should pledge or provide sufficient collateral which, together with FDIC insurance, equals or exceeds the amount of public funds on deposit at all times. In order to be valid against the FDIC in the event of failure or insolvency of the depository institution, this pledge or provision of collateral should be evidenced by an agreement between the County Clerk and the depository institution, signed by both parties, that is (a) in writing, (b) approved by the board of directors of the depository institution or its loan committee, which approval must be reflected in the minutes of the board or committee, and (c) an official record of the depository institution.

Custodial Credit Risk - Deposits

Custodial credit risk is the risk that in the event of a depository institution failure, the County Clerk's deposits may not be returned. The County Clerk does not have a deposit policy for custodial credit risk but rather follows the requirements of KRS 41.240(4). As of December 31, 2011, all deposits were covered by FDIC insurance or a properly executed collateral security agreement.

Note 4. Libraries and Archives Grant

The County Clerk received a local records microfilming grant from the Kentucky Department for Libraries and Archives in the amount of \$9,200. Grant funds were not expended during 2011. The unexpended grant balance was \$9,110 as of December 31, 2011 due to a bank service fee that was charged and not credited back to the account until March 2012.

JEFFERSON COUNTY
 NOTES TO THE FINANCIAL STATEMENTS
 December 31, 2011
 (Continued)

Note 5. Lease Agreements

Commitments to the following lease agreements as of December 31, 2011 were:

Item Leased	Monthly Payment	Term Of Agreement	Ending Date	Principal Balance 12/31/11
CashLINK Machines	\$ 2,120	60 months	8/1/2015	\$ 95,391
Postage Meter	\$ 570	60 months	7/1/2014	\$ 5,700
Postage Meter	\$ 2,760	48 months	7/1/2015	\$ 41,400
Copier	\$ 476	60 months	11/1/2015	\$ 21,896
Totals				<u>\$ 164,387</u>

Note 6. Rental Agreements

The Office of the County Clerk was party to several rental agreements for copiers during calendar year 2011. These agreements were on a month-to-month basis and could be terminated at any time.

Note 7. Going Out of Business Account

This account is used for deposits made by companies who must post a bond when they have a going out of business sale. After the sale, the bond may be released to the company. The account had receipts of \$1,000 and disbursements of \$0 for calendar year 2011. The account had a balance of \$19,939 as of December 31, 2011.

Note 8. Bankruptcy Account

This account is used for bankruptcy payments from the Chapter 13 Bankruptcy Trustee. The payments from the trustee are for tangible property tax due to the state or clerk or for delinquent property tax owed. The account had receipts of \$1,210 and disbursements of \$38 for calendar year 2011. The account had a balance of \$80,286 as of December 31, 2011.

Note 9. Delinquent Tax Escrow Account

This account is used to account for funds received when a third party purchases a delinquent tax bill but cannot be located by the property owner when the property owner attempts to pay the bill. The Clerk accepts payment for the bill and keeps this money in escrow for the third party purchaser. The account had receipts of \$3,032 and disbursements of \$0 for calendar year 2011. The account had a balance of \$10,462 as of December 31, 2011.

JEFFERSON COUNTY
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2011
(Continued)

Note 10. Discretionary Account

The Clerk has established a discretionary fund as provided by KRS 64.345. This account is used to pay additional expenses related to employee training, retirements, and extraordinary office expenses in amounts authorized by the approving authority. The account had \$0 in receipts, expenditures of \$231, and an ending balance of \$29,070 as of December 31, 2011.

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND
ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF THE FINANCIAL
STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS



ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS

The Honorable Greg Fischer, Mayor, Louisville/Jefferson County Metro Government
The Honorable Barbara A. Holsclaw, Jefferson County Clerk
Members of the Louisville/Jefferson County Metro Council

**Report On Internal Control Over Financial Reporting And
On Compliance And Other Matters Based On An Audit Of The Financial
Statements Performed In Accordance With Government Auditing Standards**

We have audited the financial statements - regulatory basis of the Jefferson County Clerk for the year ended December 31, 2011, and have issued our report thereon dated August 27, 2012. The County Clerk's financial statements are prepared in accordance with a basis of accounting other than generally accepted accounting principles. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

Management of the Jefferson County Clerk's office is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the County Clerk's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the County Clerk's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the County Clerk's internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.



Report On Internal Control Over Financial Reporting And
On Compliance And Other Matters Based On An Audit Of The Financial
Statements Performed In Accordance With Government Auditing Standards
(Continued)

Compliance And Other Matters

As part of obtaining reasonable assurance about whether the Jefferson County Clerk's financial statements for the year ended December 31, 2011, is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under Government Auditing Standards and which are described in the accompanying comments and recommendations as items 2011-01, 2011-02, 2011-03, and 2011-04.

The Jefferson County Clerk's responses to the findings identified in our audit are included in the accompanying comments and recommendations. We did not audit the County Clerk's responses and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of management, the Louisville/Jefferson County Metro Council, and the Department for Local Government and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adam H. Edelen', with a stylized flourish at the end.

Adam H. Edelen
Auditor of Public Accounts

August 27, 2012

COMMENTS AND RECOMMENDATIONS

JEFFERSON COUNTY
BARBARA A. HOLSCLAW, COUNTY CLERK
COMMENTS AND RECOMMENDATIONS

For The Year Ended December 31, 2011

STATE LAWS AND REGULATIONS:

2011-01 The County Clerk Runs A Non-Profit Corporation Out Of Her Public Office

During expenditure testing and review of credit card expenditures, we noted that a private, non-profit corporation called Voter Outreach, Inc. reimbursed the Clerk's office for purchases made on its behalf.

Upon inquiry, we found the following information about Voter Outreach, Inc. The organization is an IRS-approved 501(c)(3) corporation founded in 1992 to educate citizens about the voting process, initially incorporated by a former Jefferson County Clerk. According to documents on its website, the corporation's two main projects are the License to Vote Art Contest and Mock Elections. According to the Kentucky Secretary of State's website (as of June 14, 2012), the current corporate officers and directors of Voter Outreach, Inc. are all employees of the Clerk's office, including the Clerk, Bobbie Holsclaw. The official address of the non-profit corporation is the Clerk's main public office, and the registered agent of the corporation is a Clerk's employee.

Based on information gathered during the audit through review of documents and interviews with staff, we noted the following issues:

- A Jefferson County Clerk employee's private business provided a service to the non-profit corporation. This Clerk's employee was also listed as the registered agent for Voter Outreach, Inc., the non-profit corporation.
- There are no paid employees of Voter Outreach, Inc. Jefferson County Clerk employees provided services for the non-profit organization, including: web design, printing, marketing and design work, administering the program, soliciting donations, and working the Art Contest awards ceremony event.
- Clerk employees used official credit cards of the Clerk's office to make purchases for Voter Outreach, Inc., which were then reimbursed. Some of these purchases were for items that would be unallowable expenditures if made from the Clerk's fee account, such as laptop computers for the License To Vote Contest winners and food for the awards ceremony.
- Clerk employees make purchases directly with vendors that are charged to the Clerk, then are reimbursed by Voter Outreach, Inc.
- Some of the businesses that have donated supplies or prizes to the corporation's License to Vote contest are businesses that the Clerk's public office regularly does business with, causing an appearance of impropriety and potential conflicts of interest.
- On Voter Outreach Inc. materials, such as the website and the License to Vote Art Contest form, contact information for the public lists a Jefferson County Clerk employee and a Clerk's public office address.

Based on the review of this private, non-profit corporate account, we find the Clerk was not in compliance with the following:

- KRS 64.850 Commingling of Private and Public Funds Prohibited - By purchasing items for Voter Outreach, Inc. with fee account funds, then reimbursing the fee account.
- Funk v. Milliken, 317 S.W.2d 499 (KY 1958) – Because unallowable items were purchased by the fee account then subsequently reimbursed by Voter Outreach, Inc.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-01 The County Clerk Runs A Non-Profit Corporation Out Of Her Public Office (Continued)

We recommend the Clerk completely separate the activity of the non-profit corporation from the official business of the Clerk's office. This includes, but is not limited to:

- refraining from commingling public and private funds between public and private accounts by making purchases from the public fee account, then obtaining reimbursement from the private corporate account;
- refraining from directing the Clerk's public employees to work on Voter Outreach, Inc. projects during the normal working hours of the Clerk's office;
- refraining from using the Clerk's public office, supplies, and equipment for Voter Outreach, Inc.'s private activities.

This matter is being referred to the Louisville/Jefferson County Ethics Commission and to the Jefferson County Attorney for determination whether further investigation by their offices is warranted.

County Clerk's Response: The Jefferson County Clerk's Office welcomes the opportunity to provide this comment to clarify that the County Clerk does not run a private corporation out of her public office. Voter Outreach, Inc. is a public charity serving a public service created more than twenty years ago and approved in every audit since that time. It is designed to promote voter registration, education and awareness, important duties of the Clerk's Office.

The Attorney General has approved use of public funds for donation to charities that also received private donation for support of voter education. OAG 92-87 holds that "We have no hesitation in concluding that increasing voter education, participation, and registration represent a valid public purpose." Furthermore, OAG 86-23 holds, "A county may donate to a private corporation to fulfill a function that the county is itself authorized to engage in." No "comingling" of public and private funds occurred; all of Voter Outreach, Inc's funds are public funds used for public purposes.

Voter Outreach, Inc. has never been disapproved in any audit. Because this Audit was of the Clerk's Fee Account, it does not encompass elections, which are funded by Louisville Metro Government pursuant to KRS Chapter 117.345. Therefore, KRS Chapter 64, the restrictions on the fee account set out in KRS 64.850, and Funk v. Milliken do not apply. However, KRS 64.345 was amended in 2004 to specify that the approving authority may authorize discretionary funds as specified and this spending has been authorized pursuant to that statute by Louisville Metro Government with the approval of the Clerk's 2011 budget.

Louisville Metro Government approves the Clerk's Fee Budget that includes some office expense funds for Vote Outreach, Inc. Funk v. Milliken allows Louisville Metro Government to approve such categories of reasonable official expenses. See, e.g., Funk at 506 which holds that office expenses are proper charges against fees. The organization is fully compliant with IRS 501c3 requirements, does not compensate any JCCO employee and does not use any JCCO fees

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-01 The County Clerk Runs A Non-Profit Corporation Out Of Her Public Office (Continued)

County Clerk's Response: (Continued)

improperly. The de minimis purchases made by JCCO employees for Voter Outreach, Inc. and later reimbursed by Voter Outreach, Inc., has been approved by every audit in the past 20 years. In one instance a JCCO employee paid a small sum to a private firm, she had an interest in, for services needed at the last minute by Voter Outreach, Inc. This was fully disclosed at the time and the employee was advised to refrain from this practice in the future. If the Auditor wishes to change this procedure going forward, the Clerk's Office will comply, but there is no past violation because the Clerk's Office followed appropriate procedures.

Voter Outreach, Inc. has a corresponding statewide program set for in KRS 117.900, which solicits private donations, and private sponsorships for children contests run out of the Kentucky Secretary of State's Office to teach civic duty to Kentucky's children. The Secretary of State's Office also provides services such as web design, marketing, administration, and soliciting donations for the children's' contest just like the Jefferson County Clerk's Office. Both also provide prizes funded from donations.

The County Clerk does not intend to end Voter Outreach, Inc. but will ensure that no funds are expended from the Clerk's Fee Account and will follow whatever changes in procedure that the Auditor suggests.

Auditor's Reply: In its response, the Clerk's office indicates that it is not running a private corporation out of the Clerk's public office, but indicates Voter Outreach, Inc. is a public charity serving a public purpose using public funds. We acknowledge that OAG 92-87 opines that voter outreach and education is a public purpose, and one that may fall within the functions of the County Board of Elections, of which the Clerk serves as chair. However, using a private, non-profit corporation that is a 501(c)(3) organization to avoid the restrictions on a county clerk set forth in *Funk v. Milliken* in expending a fee officer's public funds is not appropriate. All books and accounts of the Clerk's public office are public accounts subject to audit by the Auditor of Public Accounts (APA), and *Funk v. Milliken* applies to all books and accounts of the Clerk when acting in her official capacity.

Based on the circumstances noted, going forward, if the Clerk maintains Voter Outreach, Inc. as a public charity performing a public function, and chooses to continue its operations from the Clerk's office using Clerk employees, this will be treated as any other book or account of the Clerk as a fee officer, and it will be audited, applying the restrictions established in *Funk v. Milliken*. It is important to note that the 2011 audit viewed this organization as a private entity, and, therefore, did not apply *Funk v. Milliken* to the testing of Voter Outreach, Inc. expenses to determine if they were only those expenses necessary and reasonable to carry out the public function of the organization. However, the auditors will apply *Funk v. Milliken* criteria in future audits if Voter Outreach, Inc. is administered by the Clerk's employees while getting paid by the Clerk from public funds and while being operated from and through the Clerk's office.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-02 The County Clerk Administered A Charitable Fund Out Of Her Office, And Did Not Maintain Sufficient Documentation To Ensure Funds Were Properly Accounted For Or Properly Remitted To The Charities

During the audit, we became aware of a bank account titled "Employee Charitable Fund." This account is a fund that the Clerk uses to deposit the following:

- Employee dress down money – employees can pay \$1 to dress down on designated Fridays
- Proceeds from the sale of "Support Our Troops" yard signs, sold out of the Clerk's office to the public for \$5 each, to be donated to USA Cares, Inc.
- Donations collected from employees and the public for Crusade for Children charity – raised through the sale of Crusade head cut-outs, bake sales, contests, and other fundraising efforts

Checks were written from the Fund for the following in 2011:

- Donation check to Crusade for Children, as mentioned above
- Reward lunches, breakfasts, and trophies for fundraising efforts
- Retirement party expenses and other refreshments
- Crusade bracket winner

After reviewing the available documentation and interviewing staff about the account, we note the following issues and concerns:

- Very little documentation was maintained for deposits and activity in this account. The receipt documentation consisted of two spreadsheets showing funds collected for the two charities mentioned above, which could not be verified. There was no receipt information provided for the employee dress down money.
- Bank statements for 2010 could not be located. Auditors requested and received copies directly from the bank.
- No receipts or disbursements ledgers were maintained for the activity in the account.
- No bank reconciliations were performed on the account.
- Deposits were not made on a regular basis as money was collected. We noted only four deposits in 2011. There were no deposits made from July 2011 until January 2012.
- According to the administrator of the account, a large amount of cash was kept in a safe for weeks during the Crusade for Children fundraiser. The total amount collected was deposited in June. Only the administrator and one other individual had access to the safe.
- There was no oversight or review by management of the checkbook, bank statements, deposits or activity in this account.
- While two signatures were required on checks written from the account, the administrator signs the checks and uses the Clerk's signature stamp for the second signature. No one else reviewed the checks.
- According to the administrator, some expenditures were made in cash, such as the employee of the month gift and the Easter egg hunt prizes for the branches.
- Because the employee dress down money is not accounted for, the administrator subtracted the amount she knew to be attributed to Crusade for Children money and the amount she knew to be for USA Cares to determine the amount of employee money.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-02 The County Clerk Administered A Charitable Fund Out Of Her Office, And Did Not Maintain Sufficient Documentation To Ensure Funds Were Properly Accounted For Or Properly Remitted To The Charities (Continued)

- The amount of the check written to the Crusade for Children charity was less than the money collected (as shown on the receipt spreadsheet mentioned above) from the various Clerk's office branches for 2011. We noted a similar issue in the checkbook for 2012, based on the check register, the check written was less than the cash deposit. The administrator said that part of the deposit could have been dress down money, but there was no documentation maintained to support this.
- During review of prior year account activity, we noted commingling of public and private funds due to expenditures made by the Clerk's fee account and subsequently reimbursed by the Employee Charitable Fund.
- No donation was sent to USA Cares, Inc. for the sale of yard signs in 2011. A check was written after auditors requested the account information in June 2012.
- Because of poor recordkeeping, there was difficulty determining that restricted donations were remitted intact to the charities. The administrator noted that she purchased t-shirts and trophies to award Clerk's office branches for their fundraising efforts using donated funds.
- According to the administrator, several automotive dealers that regularly do business with the Clerk's office provide donations to the Crusade for Children charity through the Clerk's fundraiser.
- There is an increased risk of not properly accounting for public funds of the Clerk's office due to the additional cash and generic receipt books used to administer these charitable contributions.

Based on the review of this account, this activity is not essential to or necessary for the operation of the Clerk's office, and the following statutes indicate the activity is not allowable for a public office:

- KRS 64.850 Commingling of Private and Public Funds Prohibited - By purchasing items for the private Employee Charitable Fund with public fee account funds, then reimbursing the fee account.
- KRS 64.410 - A county clerk may not charge or receive a fee for a service the clerk provides unless that fee is expressly authorized by statute. The Clerk was not authorized to sell \$5 yard signs and Crusade for Children head cut-outs to the public.
- Funk v. Milliken, 317 S.W.2d 499 (KY 1958) – Because in previous years unallowable items were purchased by the public fee account then subsequently reimbursed by the private Employee Charitable Fund.
- Louisville/Jefferson County Code of Ethics Section 21.02 (E) "No Metro Officer...shall solicit or accept any gift, favor, loan, political contribution, service, economic opportunity, promise of future employment, or other thing of value based upon an understanding, or under circumstances from which it could reasonably be inferred, that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered: ... (2) For the purpose of gaining access to the Metro Officer.

JEFFERSON COUNTY
 BARBARA A. HOLSCLAW, COUNTY CLERK
 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-02 The County Clerk Administered A Charitable Fund Out Of Her Office, And Did Not Maintain Sufficient Documentation To Ensure Funds Were Properly Accounted For Or Properly Remitted To The Charities (Continued)

- Section 179 of the Kentucky Constitution appears to prohibit a county clerk from obtaining money for any corporation, association or individual, which would prohibit the Clerk from soliciting donations from the public.

This matter is being referred to the Louisville/Jefferson County Ethics Commission and the Jefferson County Attorney for determination whether further investigation by their offices is warranted.

Pending review and determination by the County Attorney and Louisville/Jefferson County Ethics Committee:

- The County Clerk should cease selling the Support Our Troops yard signs, as the sale of these signs is not authorized by law.
- The County Clerk should cease commingling public and private funds.
- The County Clerk should cease soliciting donations from the public.

County Clerk's Response: The Jefferson County Clerk's Office employs on average 275 people to serve the citizens of Jefferson County and thus takes its duties as an employer very seriously. Those duties include providing incentives and awards to motivate employees. Like many employers, the Clerk's Office allows employees to pay a \$1 donation for dress down Fridays, and adopts fundraising goals near and dear to the hearts of the employees: Crusade for Children and USA Cares, Inc., both are 501c3 charities.

These practices are common across the Commonwealth and have been approved by the State Auditor's Office. The Kentucky County Clerk's Association (KCCA) has guest speakers on a regular basis requesting that all Kentucky clerks collect funds on behalf of their causes. At one of the KCCA meetings where charitable fund collection was discussed, an employee of the State Auditor's Office informed the clerks that it was fine to collect for charitable causes so long as the employee's time spent on fundraising is not excessive. The State Auditor's Office employee stated that the amount of employee time spent was at the discretion of each clerk. If the State Auditor wishes to change this procedure, the Clerk's Office will certainly consider all recommendations, but the Office must not be condemned for following an approved procedure.

The Employee Charitable Fund and the donation activities have been approved by the State Auditor for the past 20 years. Prior to 2007, the account was managed and tracked in the Finance Division of the Jefferson County Clerk's Office. The State Auditor recommended that the fund be moved to the Administration Office and managed by staff there, thus removing it from the Finance Division. The person administering the funds, therefore, has no involvement with administering any other funds, making comingling impossible.

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 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-02 The County Clerk Administered A Charitable Fund Out Of Her Office, And Did Not Maintain Sufficient Documentation To Ensure Funds Were Properly Accounted For Or Properly Remitted To The Charities (Continued)

County Clerk's Response: (Continued)

No funds were ever found missing or abused from the account. The check register that is used to track receipts and disbursement is compared to the monthly bank statement each month to ensure checks have cleared and deposits credited. Since the inception of the account, no checks have been missing and all checks have been accounted for, whether cashed or voided. Due to the limited nature of the account activity, only one-year worth of back-up information is retained.

These funds are kept separate from the Clerk's Fee Account that is the subject of this Audit. As it is not part of the Fee Account, KRS Chapter 64 is not implicated, nor is Funk v. Milliken. However, Funk v. Milliken allows Louisville Metro Government to approve such categories of reasonable official expenses. See, e.g., Funk at 506 which holds that office expenses are proper charges against fees. Section 179 of the Kentucky Constitution does not apply. It is titled "Political subdivisions not to be stockholders in corporation, or appropriate money or lend credit to any person, except for roads or State Capitol." The Clerk's Office is not only not a political subdivision, but it also is not a stockholder, nor does it appropriate money or lend credit to persons. The Louisville Metro Government Code of Ethics does not apply either, as the employees of the JCCO who participate in these activities are not "Metro Officer" under the Code.

Although members of the public have made donations through this fund to the Crusade for Children and USA Cares, Inc., none of the citations made by the State Auditor forbids this activity. Such fund drives are important employee activities and serve to benefit well-loved charities. No employee or member of the public is coerced into making a donation nor are services withheld for those who chose not to donate. The Support Our Troops signs were a gift to be distributed either for a donation to USA Cares Inc. or for free. When the signs are fully distributed, which will occur within the year, the campaign will end.

The typical fire department spends many, many more hours, on the clock and with public vehicles, raising money for Crusade for Children than the Clerk's Office. These fire fighters also seek donations from the public on street corners throughout the city. The employees of the State Auditor may very well participate in the same type of activities if they participate in the Kentucky Employees Charitable Campaign, a partnership between state employees and six charities, one of which is the Crusade for Children. All state employees, including the State Auditor employees were given extra lunch time to attend the 2012 Kentucky Employee Charitable Campaign kickoff on July 17, 2012 and were encouraged to attend.

The County Clerk does not intend to end these fundamental employee services, but will ensure that the Employee Charitable Fund is not commingled with the Clerk's Fee Account and that all best practices are followed in administering the account. The County Clerk anticipates creating a JCCO Employee Association and handing the account to it.

JEFFERSON COUNTY
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 COMMENTS AND RECOMMENDATIONS
 For The Year Ended December 31, 2011
 (Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-02 The County Clerk Administered A Charitable Fund Out Of Her Office, And Did Not Maintain Sufficient Documentation To Ensure Funds Were Properly Accounted For Or Properly Remitted To The Charities (Continued)

Auditor's Reply: We would like to clarify that there is a distinction between collecting charitable contributions from employees and soliciting charitable donations from the public for activities that are not part of the Clerk's operations. In its response, the Clerk's office indicates it is common practice across the Commonwealth and approved by the APA to raise funds for charities. Any approval by the APA was for limited activities to promote *employee* charitable contributions, which have not been restricted by this finding. The response of the Clerk's office compares the charitable activity of state employees in collecting funds from state employees on behalf of the Kentucky Employees Charitable Campaign with the charitable activity of the Clerk's office in soliciting and collecting funds from the public for charities. The KECC, however, is expressly authorized by law, at KRS 18A.110 and 101 KAR 2:095, Section (8), while the Clerk's activity in soliciting and collecting charitable donations from the public is not.

To reiterate, the finding focuses on poor accounting and internal controls of contributions, and the solicitation and collection of donations from the public, which is not a necessary activity for the operation of the Clerk's office.

The response of the Clerk's office also indicates that the activities are not subject to audit as they are not part of the fee account and are not subject to *Funk v. Milliken*. As stated in the APA's reply to Comment 1, all books and accounts maintained by the Clerk, a fee officer, are subject to audit, and the restrictions of *Funk v. Milliken* apply.

2011-03 The County Clerk Should Expend Funds For Allowable Purposes Only

During the test of imprest account expenditures, auditors noted \$3,845 in expenditures that are not considered allowable expenses of a County Clerk's office. These expenditures were personal in nature or not supported with adequate documentation. In accordance with Funk v. Milliken, 317 S.W.2d 499 (KY 1958), expenses made through the fee account must be necessary for the operation of the office, reasonable in amount, beneficial to the public, not predominately personal in nature, and supported by adequate documentation.

The following schedule provides a breakdown of the expenditures made from the Clerk's imprest account that are not allowable under Funk v. Milliken:

<u>Reason</u>	<u>Amount</u>	<u>Explanation</u>
Personal In Nature	\$ 245.00	AAA Memberships For Individuals
Insufficient Documentation	3,600.00	Prepaid Gas Cards - Undocumented Use
	<u>\$ 3,845.00</u>	Total Disallowed Expenditures

JEFFERSON COUNTY
BARBARA A. HOLSCLAW, COUNTY CLERK
COMMENTS AND RECOMMENDATIONS
For The Year Ended December 31, 2011
(Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-03 The County Clerk Should Expend Funds For Allowable Purposes Only (Continued)

We recommend the County Clerk ensure that proper documentation be maintained to support all expenditures and ensure that all expenditures are reasonable and necessary for the operations of the office and not predominately personal in nature. We also recommend the County Clerk reimburse the official fee account \$3,845 for disallowed expenditures.

County Clerk's Response: The Audit erroneously lists two expenditures as unnecessary and recommends reimbursement. The Clerk's Office again stresses that these expenditures have passed every previous audit and are completely necessary and proper. Additionally, these expenditures have been approved by the Commonwealth of Kentucky Finance and Administration Cabinet, County Fees Branch and Louisville Metro Government. Funk v. Milliken allows Louisville Metro Government to approve such categories of reasonable official expenses. See, e.g., Funk at 506 which holds that office expenses are proper charges against fees.

The prepaid gas cards are proper expenditures that do not come from the Fee Account and thus are not subject to this Audit, which is titled by the State Auditor's Office as the "Fee Account Audit."

Louisville Metro Government pays election costs and reimbursed the Clerk's Office for these approved expenditures. The Kentucky Finance and Administration Cabinet, County Fees Branch approved the prepaid gas cards as the best method of ensuring employees could travel between polling places and election equipment could be delivered and picked up. These expenses were approved by Louisville Metro Government as part of the 2011 budget for office expenses. KRS 64.345 was amended in 2004 to specify that the approving authority may authorize discretionary funds as specified and this spending has been authorized pursuant to that statute by Louisville Metro Government with its approval of the Clerk's 2011 budget.

The prepaid gas cards were paid from the Louisville Metro Government Reimbursable funds account, which covers the necessary expenses and oversight for the election process, by the Election Center staff. The cards were used to fuel the rental trucks that are used to deliver and pick up election equipment as well as the cars used by sheriffs and area supervisors who must visit the polling places twice daily to ensure the integrity of the election process and to deliver additional election supplies when necessary. The trucks require more than \$50 of fuel for one fill up and may require multiple fill ups during the Election Day. The prepaid cars were recommended by Tammy Redfern of the Kentucky Finance and Administration Cabinet, County Fees Branch, who advised the Clerk's Office to obtain receipts to back up all purchases. The Clerks' Office Director of Finance purchased the cards and distributed them to the Election Center. The Election Center Manager then distributes them to the co-managers of the Election Center Warehouses for use.

The American Automobile Association (AAA) memberships were approved by the State Auditor's office on June 14, 2010. The Clerk's Office has a Logistics Department where staff uses County Clerk vehicles to deliver mail and supplies to the various Clerk Office branches in the county. If a vehicle breaks down, the Kentucky Finance and Administration Cabinet, County Fees Branch personnel instructed us to ensure that it is towed or repaired only by vendors who are 1099 reportable. Therefore, the Clerk's Office could no longer obtain services by the closest business. AAA does not sell memberships based on particular vehicles, but requires membership for particular people. Even knowing this limitation, the State Auditor's Office approved the purchase.

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COMMENTS AND RECOMMENDATIONS
For The Year Ended December 31, 2011
(Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-03 The County Clerk Should Expend Funds For Allowable Purposes Only (Continued)

County Clerk's Response: (Continued)

In conclusion, both expenditures were approved by either the State Auditor or Tammy Redfern of the Kentucky Finance and Administration Cabinet, County Fees Branch. Therefore, both expenditures were proper when made. The Clerk's Office will examine different procedures for purchasing gas for vehicles and will cancel the AAA membership, contracting for tow services or repairs on an as needed basis in the future.

Auditor's Reply: In its response, the Clerk's office indicates that the expenditures noted in the finding have passed every previous audit. The APA disagrees with this characterization, as the expenditures in question were not identified in previous audits. The Clerk's office response states that the prepaid gas cards did not come from the Fee Account, and were reimbursed by Louisville Metro Government. However, the prepaid gas cards were purchased through the Fee Account. Neither during the audit, nor during subsequent discussions with employees of the Clerk's office, was the APA provided explanation or evidence indicating the prepaid gas cards were reimbursed by Louisville Metro Government. Also, it is important to reiterate that regardless of whether the expense was reimbursed, there is an expectation that election expenses, like all expenses of the Clerk, are necessary and reasonable to carry out the function, and that internal controls exists to reduce the risk of fraud or abuse. The finding identified the Clerk's office did not maintain sufficient documentation to show that the gas cards were used for their intended purposes.

Also, the response of the Clerk's office indicates the AAA memberships were approved by the APA. The response further states that even knowing that AAA only has individual memberships and does not offer memberships for vehicles, the APA approved the purchase. The APA strongly disagrees with this characterization. We acknowledge an employee of the Clerk's office asked an APA auditor if an AAA membership could be purchased for the Clerk's delivery van. The auditor responded that he believed purchasing a membership for the van was ok, but suggested the employee make sure that AAA covers large vans and government operations. There was never a question posed as to whether AAA membership can be obtained for an employee, nor was it made known to the auditor that AAA only gives memberships to individuals once that fact was known to the Clerk's office. This email was discussed with employees of the Clerk's office prior to the response to this finding, and the APA reiterated that it did not give approval for AAA memberships for employees, which would constitute a fringe benefit to the employee.

As a matter of practice, the APA does not give any official or auditee "approval" of management matters. Although auditors are often asked for "guidance", it is not uncommon for a question to be phrased in a way that is incomplete, and, therefore, guidance given as a courtesy cannot preclude audits from identifying and reporting the matter as improper when all facts and circumstances are known.

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COMMENTS AND RECOMMENDATIONS
For The Year Ended December 31, 2011
(Continued)

STATE LAWS AND REGULATIONS: (Continued)

2011-04 The County Clerk Paid Employees \$99,200 In Christmas Gifts In Calendar Year 2011

In December 2011, the County Clerk paid employees a 2% salary adjustment totaling \$142,210 and also an additional \$400 as a Christmas gift totaling \$99,200. According to a letter from the Clerk addressed to "All Employees" dated December 14, 2011, the \$400 was considered by the Clerk to be a Christmas gift. The Christmas gift is a bonus and is prohibited by Ky. Const. Sec. 3, according to OAG 83-432. We recommend the County Clerk's office discontinue the practice of paying bonuses to employees.

County Clerk's Response: The Jefferson County Clerk's Office employs an average of 275 people to serve the citizens of Jefferson County and thus takes its duties as an employer very seriously. Those duties include providing incentive for good work and to motivate employees. Like many employers, the Clerk's Office offers cost of living wage increases and incentive pay when appropriate. While the cost of living increases represent a raise that applies going forward, the incentive pay is a one-time payment that rewards good work but does not obligate the Clerk's office to commit to the raise in the future.

After paying no cost of living increases the year before, the Clerk's Office provided both a cost of living increase and a one-time payment incentive pay at the end of the year 2011. The cost of living increase was made at the end of the year, to ensure that funds were available. It was actually a raise that increased wages into the future. The one-time incentive pay was also made at the end of the year but it did not add to the hourly rates going forward. Both payments were not gifts, but were appropriate employee compensation.

The Clerks' Office consulted with the Kentucky Finance and Administration Cabinet, County Fees Branch, before developing a budget with the additional pay and complied with all procedures for paying year-end wages. The compensation was an approved employee expenditure. Additionally, Louisville Metro Government approved the Clerk's Office budget containing this expenditure. OAG 83-432 allows incentive pay. In addition, this Clerk's Office practice has been approved by the State Auditor in the past. Additionally, KRS 64.345 was amended in 2004 to specify that the approving authority may authorize discretionary funds as specified and this incentive pay has been authorized pursuant to that statute by Louisville Metro Government with its approval of the Clerk's 2011 budget.

Because the payment was made at Christmas time, the Clerk's Office sent a letter to employees calling it a gift. In the future, the Clerk will be more accurate in calling the pay incentive pay even if it is provided to employees at Christmastime.

Auditor's Reply: In its response, the Clerk's office indicates the practice of employee raises has been approved by the APA in the past. The APA does not approve management practices. In previous audits, the APA has not commented on employee incentive raises because they appeared to meet the requirements related to employee pay. The 2011 finding is a result of the documentation maintained in employee files characterizing the payment as a gift, as acknowledged in the response of the Clerk's office. Additionally, the Clerk's office should note that all incentive based awards should be part of a program that documents how an employee met specific criteria to earn the award. The letter in employee files appeared to be a general letter to all employees, and did not specifically address how employee met criteria to earn an incentive.

